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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 GERARD CHARLES RICCIO,

15 Defendant.

CASE NO. 10cr4082WQH

ORDER

16 HAYES, Judge:

17 The matter before the Court is the motion to reconsider the grant of defendant's motion
18 to suppress evidence, and alternatively, motion for clarification. ECF No. 41.

19 **BACKGROUND**

20 On October 13, 2010, the Government filed an indictment charging the Defendant with
21 one count of receiving images of minors engaged in sexually explicit conduct in violation of
22 18 U.S.C. § 2252(a)(2), and one count of possession of images of minors engaged in sexually
23 explicit conduct in violation of 18 U.S.C. § 2252(a). ECF No. 1.

24 On August 5, 2011, the Court entered an order granting the Defendant's motion to
25 suppress evidence. ECF No. 40. The Court stated:

26 In this case, the Court must balance the possessory interest of the Defendant in
27 the hard drive seized by Officer Campbell with the important governmental
28 interests offered for the delay in securing a search warrant. The initial
interference with Defendant's possessory interest in this case was a result of
private action and did not violate the Fourth Amendment because of its private
character. Officer Campbell had probable cause to seize the hard drive based

1 upon the information provided by the private search “for a time necessary to
2 secure a warrant.” *Segura*, 468 U.S. at 806. The finding of probable cause to
3 seize the hard drive did not relieve law enforcement of its obligation to to
4 “diligently” obtain a warrant. *Dass*, 849 F.2d at 415 (“We reject the
5 government’s assertion that there is a contraband exception to the fourth
6 amendment.”). Defendant did not consent to the seizure of his hard drive by
7 Officer Campbell and maintained a possessory interest in his hard drive which
8 contained family photos.

9 Initially, there was a delay of sixteen days from the seizure on March 22, 2009
10 until April 7, 2009 when Detective Righthouse was assigned this case. The
11 record does not contain any facts or circumstances to explain this delay.
12 Detective Righthouse testified that she was assigned the case on April 7, 2009
13 and that she investigated the case. Detective Righthouse testified that she had
14 other ongoing active cases; and that she gave priority to cases involving live
15 juvenile victims, cases involving adult witnesses or victims, and cases that
16 involved anyone in custody. Detective Righthouse did not testify that her
17 workload or her case priorities prevented her from seeking a search warrant
18 before June 23, 2009. The Government did not present any specific facts to
19 explain the necessity of the seventy-five day delay in seeking a warrant. The
20 affidavit in support of the warrant prepared by Detective Righthouse primarily
21 relied upon the report of Officer Campbell and facts obtained early in the
22 investigation. There are no facts or circumstances advanced by the Government
23 from which the Court can conclude that the seventy-five day period was
24 necessary in order for Detective Righthouse to obtain the state search warrant.

25 Under the facts and circumstances in the record of this case, the Court concludes
26 that the ninety-one day delay in obtaining a warrant was not reasonable. The
27 warrant requirement protects against unreasonable assertions of executive
28 authority and assures that any seizure will be independently evaluated by a
neutral magistrate. *See United States v. Song Ja Cha*, 597 F.3d 995, 1004 (9th
Cir. 2010) (the limitations upon warrantless seizures protects “two goals of the
fourth amendment - deterring unreasonable police behavior and judicial
determination of probable cause.”). The Court concludes that the Fourth
Amendment rights of the Defendant were violated by the seizure and that the
evidence obtained from the hard drive must be suppressed as a direct result of
the constitutional violation. *Id.* at 1003-04. Defendant’s motion to suppress the
evidence from the hard drive seized from Paddock is granted.

ECF No. 40 at 10-11. The Court further concluded that the evidence found as a result of the
federal search warrant must be suppressed. The Court stated:

The record conclusively establishes that the information derived from the hard
drive, and suppressed as a direct constitutional violation, prompted the decision
by Detective Righthouse to seek a federal warrant to search the Defendant’s
home. The independent source doctrine will not avoid exclusion of the evidence
acquired as a result of a violation of the Defendant’s constitutional rights. *See*
Murray, 487 U.S. at 542. Under the facts of this case, neither the independent
source doctrine nor the good faith exception will avoid suppression of the
evidence found as a result of the federal search warrant. *See Song Ja Cha*, 597
F.3d at 703 (quoting *United States v. Lopez-Soto*, 205 F.3d 1101, 1106 (9th Cir.
2000) (“there is no good-faith exception to the exclusionary rule for police who
do not act in accordance with governing law.”)).

Id. at 12-13 (footnote omitted).

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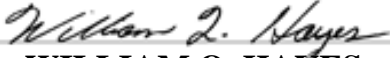
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1 “Defendant’s motion to suppress the evidence from the hard drive seized from Paddock is
2 granted” is denied. ECF No. 40 at 11.

3 The Court adheres to its ruling that “the record conclusively establishes that the
4 information derived from the hard drive, and suppressed as a direct constitutional violation,
5 prompted the decision by Detective Righthouse to seek a federal warrant to search the
6 Defendant’s home.” ECF No. 40 at 12-13. The police conduct in this case involved a mistake
7 of law and the good faith exception to the suppression of evidence does not apply to mistakes
8 of law. *United States v. Song Ja Cha*, 597 F.3d 995, 1005 FN8 (9th Cir. 2010) (“*Herring* did
9 not discuss mistakes of law, and our cases holding that the good-faith exception does not apply
10 to mistakes of law are still good law.”).

11 IT IS HEREBY ORDERED that the motion to reconsider the grant of defendant’s
12 motion to suppress evidence, and alternatively, motion for clarification is denied. ECF No. 41.

13 DATED: September 22, 2011

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15 **WILLIAM Q. HAYES**
16 United States District Judge
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